

**IN THE DISTRICT COURT  
AT NAPIER**

**CRI-2017-020-003506  
[2018] NZDC 5571**

**THE QUEEN**

v

**[WIREMU BALL]**

Hearing: 22 March 2018  
Appearances: C Gullidge for the Crown  
A Willis for the Defendant  
Judgment: 22 March 2018

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**NOTES OF JUDGE G A REA ON SENTENCING**

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[1] Mr [Ball], you are here for sentence on a number of matters, the most serious of which is injuring with intent to cause grievous bodily harm. You are also here for failing to attend a non-violence programme, for breaching your protection order and in a separate incident altogether wilfully attempting to pervert the course of justice.

[2] It is necessary to go over the circumstances of the case. In April 2016 you were served with a protection order which was there to protect your domestic partner, Ms [Collier]. Also named in that order for protection were the children.

[3] On the afternoon of [date deleted] January last year you were at your home address in [location deleted]. Also at the address were your immediate family who are all protected people under the order. One of those present was your [under 13] year old daughter who is the principal victim in this matter. As [under 13 year olds] tend to do, she had wanted to go out but you were not prepared to let her go. She wanted

to go to an aunty's place to return some items that she had and there was an issue about that.

[4] The way you dealt with it was to tell her she could not go but instructed her [sibling] to return the items in her place. She was unhappy about your decision and it is said that you began to laugh at her and refused to leave her alone, despite numerous requests from her. You took her phone off her so she pushed you out of the way and tried to get away from you by going into the lounge. You were then swearing at her but she continued to plead for the return of her phone. At that point you pushed her to the ground.

[5] She got up and pushed you back. You have then punched her in the shoulders and she again asked you to leave her alone. Your partner, the complainant's mother, appealed to you to stop but you became even angrier and you started hitting the [young person] harder, picking her up and throwing her to the floor continuously. This escalated to you picking up the complainant by the neck and throwing her to the ground. The punching continued to get harder and harder.

[6] The [young person] ended up lying on the ground crying, pleading with you to stop. You put a mattress on top of her while she was on the ground and you kicked the top of the mattress where her head was. You eventually stopped and fell asleep because you had been drinking heavily throughout the previous night and into the day.

[7] The complainant could not get up so her mother had to pick her up and carry her into a bedroom, and the police were called. As a result of what you did to her she suffered a fractured rib and bruising to most of the rest of her body. You declined to comment about that.

[8] In doing what you did, you were in breach of the protection order and also you have accepted that you failed to attend a domestic violence programme as you were required to do.

[9] Undoubtedly because of the violence involved here and your past record, you were remanded in custody. While in custody at the regional prison [over

approximately nine months] last year you made a total of 713 phone calls to Ms [Collier], your partner, the mother of the complainant. These were made on your own prison telephone authority and also one obtained from another prisoner.

[10] While I accept what Mr Willis says that all of these calls were not of a criminal nature, certainly some of them were. You went to great lengths to organise with your partner to try and keep the complainant and her away from the Court so that they would not give evidence. You pleaded not guilty to the charges, you had the hope that they would disappear into the ether and that there would be no evidence against you and the charges would be dismissed.

[11] There was more than one occasion when the case was due to get underway but could not because neither your partner nor the complainant turned up at Court. That was all directly attributable to the scheme that you hatched with your partner to keep both of them away from Court so that you could avoid the consequences of this vicious conduct that you inflicted in your daughter.

[12] As it turned out you were caught out. All of these calls are recorded and as a result you got charged with attempting to defeat the course of justice. You pleaded guilty to that at a very early stage and you pleaded guilty to the remaining charges at a very late stage indeed.

[13] Now I have had a lot of material provided by both your lawyer and the Crown's lawyer. I have read all of the cases that have been supplied to me and I do not intend to repeat them in any detail. I am told that you are remorseful, however, it seems to me that your remorse comes out of the fact that you are about to be sentenced today rather than a true appreciation of what you did. Not only did you attack your daughter on a continuing basis for quite some time at the home but you went to extraordinary lengths to try and make sure that you were not successfully prosecuted for that.

[14] Those two things in my view completely eliminate any consideration of remorse. Whether you accept that at this stage on reflection that you should not have behaved in this way and that you are sorry for that, that may well be the case but your

behaviour up until this matter has been disposed of by way of plea was all in the opposite direction to remorse rather than the way you are portraying it now.

[15] For the assault and the breaches I consider, looking at the authorities, that the appropriate starting point for you is a term of four years' imprisonment. There needs to be an uplift to reflect what Mr Willis accepts is an appalling past record, he has suggested 12 months. I do not think it needs to be as much as that and there will be an uplift of nine months to reflect your past history.

[16] On the assault type offending the starting point, therefore, is four years and nine months' imprisonment. You are entitled to a small discount for the fact that ultimately the case did not go to trial but the discount is extremely small bearing in mind the circumstances leading onto your plea. That will be set at five percent and, therefore, the sentence on the injuring with intent to cause grievous bodily harm charge is a term of four years and six months' imprisonment.

[17] As far as the perverting the course of justice is concerned, I accept that the Crown prosecutor says that normally the starting point for that is around three years' imprisonment. This was a concerted effort on your part and on the part of your partner to try and totally upset the Court process so you would avoid responsibility for what you clearly did.

[18] The cases show that a three year starting point would not be out of line with other cases. However, there are additional factors which in my view complicate things. Firstly, I have to look at the totality of the sentence to be imposed upon you and not just divide it into two parts and add them together.

[19] The second thing is that your partner was charged and was offered diversion. I accept that her position is entirely different than yours. She had no previous convictions as far as I understand it and it may well be said that you were the driving force from the prison for all this to happen. However, I also must accept that without her active participation your daughter and her would not have stayed away from the Court on the two or three occasions that they did. So there is something of a teamwork

involved in this between you and she, even if you were the driving force and even if it turned out she was doing this because she felt intimidated because of you.

[20] As a result of that I consider that it is necessary to readjust what the normal starting point would be and I consider that for the attempting to defeat the course of justice the appropriate starting point is a term of 20 months' imprisonment. You are entitled to the full discount of 25 percent for the fact that you have pleaded guilty and therefore the sentence for attempting to pervert the course of justice will be 15 months' imprisonment. That is cumulative, added to the 4 years six months, making a total sentence of five years and nine months' imprisonment.

[21] Bearing in mind the length of imprisonment and the circumstances here, I do not intend to impose a minimum non-parole period but that would be a certainty I would think should you commit offending like this into the future.

[22] Accordingly, on the injuring with intent to cause grievous bodily harm you will be sentenced to four years and six months' imprisonment. On the two breaches you will be sentenced to three months' imprisonment on each. All of those terms are concurrent, making a total of four years six months for those. You will be sentenced to 15 months' imprisonment on the wilfully attempting to pervert the course of justice. That is cumulative, added to the other sentence, making a total of five years and nine months' imprisonment.

G A Rea  
District Court Judge